NO. 84223-0

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ROGER SINCLAIR WRIGHT,

Petitioner.

SUPPLEMENTAL BRIEF OF RESPONDENT

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A. ISSUE

1. Under Const. Art. I, section 7 and settled case law, may police search a vehicle incident to arrest without a warrant where the driver was arrested for possession of marijuana, the car smelled strongly of marijuana, and the driver admitted smoking marijuana?

2. Should this Court reject Wright's invitation to overrule precedent and adopt the previously rejected rule of State v. Ringer[1] where an analysis of our State constitution under State v. Gunwall[2] shows that officers have always had the authority to conduct a vehicle search incident to arrest where the officer has reason to believe that evidence of the crime of arrest is in the vehicle?

3. Should this Court adopt the rule applied by the Court of Appeals -- a rule which is narrower than the rule under Arizona v. Gant[3] -- and permit vehicle searches incident to arrest where there is a nexus between the defendant, the crime of arrest, and the vehicle, and where the scope of the arrest is limited to unlocked containers in the passenger compartment?

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[1] 100 Wn.2d 686, 674 P.2d 1240 (1983).

[2] 106 Wn.2d 54, 720 P.2d 808 (1986).

[3] ___ U.S. ___, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009).

B. FACTS

A complete recitation of the relevant facts was briefed in the Court of Appeals. Br. of Resp. at 3-10. On November 26, 2006, at about 4:45 p.m., it was dark and cold outside, the roads were icy, and Wright was driving without headlights. A police officer stopped him and immediately noticed a strong odor of marijuana emanating from the car. Wright was extremely nervous, seemed reluctant to open the glove box, and when he did open the glove box to retrieve the vehicle registration the officer noticed a large roll of cash. Eventually, Wright admitted that he had been smoking marijuana and he was arrested for possession of marijuana. He was handcuffed and placed in the rear of the patrol car. The officer searched the interior passenger compartment of the car incident to arrest and, with the assistance of a dog, found marijuana and oxycodone. The officer subsequently obtained a search warrant and recovered 255 grams of marijuana in two bags, plus 250 pills of MDMA (ecstasy).

C. ARGUMENT

Wright argues that the search of his car violated both the Federal and State constitutions. His Federal constitutional claim is meritless because officers clearly had reason to believe that evidence of the crime of

arrest (marijuana possession) would be found in the car and such a search is allowed under the Federal constitution.

Wright argues, however, that the "evidence of crime of arrest" prong of the federal constitutional doctrine does not exist in Washington. Yet, as the Court of Appeals held, under case law that Wright does not challenge, the search of his car was permitted because officers smelled the clear odor of marijuana, he admitted to smoking marijuana, he was arrested for possession of marijuana, and his car could be searched for evidence relevant to that crime of arrest.

Wright also argues, however, that the scope of a search incident to arrest was limited by State v. Ringer in a manner that foreclosed a search of his car. This argument should be rejected. This Court has long permitted searches of vehicles and other personal items incident to arrest, and has consistently rejected claims that such searches violate Const. Art. I, § 7. The lone exception was Ringer, but Ringer was quickly overruled and this Court has repeatedly held, since Ringer, that vehicle searches incident to arrest comport with Art. I, § 7. Except for a modification required by Gant, Washington law remains unchanged.

1. THE COURT OF APPEALS CORRECTLY HELD THAT THE SEARCH IN THIS CASE WAS JUSTIFIED UNDER MICHAELS, RINGER, AND GRANDE.

The Court of Appeals in this case affirmed Wright's conviction because under existing case law, the search of Wright incident to his arrest for possession of marijuana was permitted under Const. Art. I, § 7. Specifically, even in State v. Ringer, 100 Wn.2d 686, 674 P.2d 1240 (1983), this Court approved the holding of State v. Michaels, 60 Wn.2d 638, 374 P.2d 989 (1962) which provided:

> an officer may take into custody a person who commits a misdemeanor in his presence, and upon making the arrest, may search the person and his immediate environs for evidence of the crime or tools which would aid in the arrested person's escape.

60 Wn.2d at 642-43.

More recently, this Court held that "a law enforcement officer must [not] simply walk away from a vehicle from which the odor of marijuana emanates and in which more than one occupant is present if the officer cannot determine which occupant possessed or used the illegal drug." State v. Grande, 164 Wn.2d 135, 146, 187 P.3d 248 (2008). Rather, the officer may search and arrest if he has reason to believe evidence of marijuana use will be found in the car. Id. (*citing* Andrea Levinson Ben-Yosef, Validity of Warrantless Search of Motor Vehicle Based on Odor of Marijuana-Federal Cases, 188 A.L.R. Fed. 487 (203); Andrea

Levinson Ben-Yosef, Validity of Warrantless Search of Motor Vehicle Based on Odor of Marijuana-State Cases, 114 A.L.R.5th 173 (2003)).[4] In this case, because the officer had training and experience to identify the odor of marijuana and smelled this odor emanating from the vehicle, and because Wright admitted to smoking marijuana, the officer had not just a "reason to believe" but also probable cause, to search Wright's vehicle.[5] The Court of Appeals also correctly noted that this Court's recent decision in State v. Patton, 167 Wn.2d 651, 219 P.3d 651 (2009) did not foreclose this result. State v. Wright, 155 Wn. App. 537, 553-55, 230 P.3d 1063 (2010) (*citing* Patton, at 395). The Court of Appeals ultimately affirmed because

> the search focused from inception on evidence of a crime the officer observed as soon as he stopped the car -- marijuana possession. Because this was no fishing expedition in which the police thought they might discover evidence of some unrelated crime, the search was lawful and the police did not invade Wright's right to privacy.

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[4] This holding is unaffected by State v. Tibbles, 169 Wn.2d 364, 236 P.3d 885 (2010) because Wright was arrested, Tibbles was not.

[5] Every Federal circuit court to address the issue, except the Ninth Circuit, has held that "reason to believe" is a lesser standard than probable cause, essentially equivalent to "reasonable suspicion" standard. *See* U.S. v. Payton, 445 U.S. 573, 603, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980) (first use of the term); Valdez v. McPheters, 172 P.3d 1220 (10th Cir. 1999); U.S. v. Route, 104 F.3d 59, 62 (5th Cir.), *cert denied*, 521 U.S. 1109 (1997); U.S. v. Risse, 83 F.3d 212, 216 (8th Cir. 1996); U.S. v. Lauter, 57 F.3d 212, 215 (2nd Cir. 1995); U.S. v. Edmonds, 52 F.3d 1236, 1247-48 (3rd Cir.), *cert denied*, 519 U.S. 927 (1996); U.S. v. Magluta, 44 F.3d 1530, 1535 (11th Cir.), *cert denied*, 516 U.S. 869 (1995); U.S. v. Diaz, 491 F.3d 1074, 1077 (9th Cir. 2007).

Wright, at 555. The decision of the Court of Appeals was correct, and may be affirmed for these reasons alone.

2. VEHICLE SEARCHES INCIDENT TO ARREST HAVE LONG BEEN ALLOWED IN WASHINGTON; THEY ARE STILL PERMISSIBLE UNDER ART. I, § 7.

Wright argues, however, that Arizona v. Gant, ___ U.S. ___, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009) "resurrected" State v. Ringer in a manner that overrules prior Washington cases and requires a return to the four corners of Ringer. *See* Appellant's Reply Brief Re Motion for Reconsideration, at 4-10. This argument must be rejected. As argued in prior briefing and as noted by the Court of Appeals, a federal court decision on a federal constitutional question cannot "resurrect" a State decision that rested on independent state constitutional grounds, especially where such a decision was subsequently reversed by the court of last resort in that State. York v. Wahkiakum School Dist. no. 200, 163 Wn.2d 297, 303, 178 P.3d 995 (2008). Thus, Wright's State constitutional claim must be analyzed on its merits if this Court does not resolve the issue as did the Court of Appeals.

a. Wright's Argument Fails A Gunwall Analysis.

This Court examines six nonexclusive factors to determine in any given case whether it is appropriate to independently interpret the state constitution and, if so, whether the state constitution provides broader protection than the federal constitution. State v. Johnson, 128 Wn.2d 431, 444, 909 P.2d 293 (1996); State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986). The factors are: (1) the textual language; (2) textual differences; (3) constitutional and common law history; (4) preexisting state law; (5) structural differences; and (6) matters of particular state or local concern. Gunwall, 106 Wn.2d at 61-62. Because this Court has already determined that Art. I, § 7 is generally more protective than the federal constitution, only those factors that are unique to the context in which the interpretation question arises, i.e., factors (4) and (6), need to be analyzed. State v. Russell, 125 Wn.2d 24, 58, 882 P.2d 747 (1994). Still, a Gunwall analysis is *required* in cases where the legal principles are not firmly established or where the scope of the broader protections in a particular context are not clear. State v. White, 135 Wn.2d 761, 769 n.7, 958 P.2d 982 (1998). Gunwall must be considered case-by-case unless that particular context has already been subject to Gunwall.

This Court did not apply a Gunwall analysis in State v. Ringer because Ringer predated the test. However, in State v. Stroud, 106 Wn.2d

144, 720 P.2d 436 (1986), a plurality opinion did apply the test, and the plurality of justices concluded that a vehicle search incident to arrest did not violate Art. I, § 7. Stroud, 106 Wn.2d at 158-64 (Durham, J. *concurring*). And, this Court has repeatedly affirmed searches incident to arrest after Stroud. State v. Fladebo, 113 Wn.2d 388, 395-97, 779 P.2d 707 (1989); State v. Johnson, 128 Wn.2d 431, 448, 909 P.2d 293 (1996) (expressly rejecting an invitation to abandon the rule of Stroud and return to the rule of Ringer); State v. Vrieling, 144 Wn.2d 489, 392-94, 28 P.3d 762 (2001) (rejecting an invitation to abandon Stroud in favor of Ringer). *See also* State v. Parker, 139 Wn.2d 486, 987 P.2d 73 (1999) (confirming validity of vehicle search incident to arrest but limiting scope to property of arrestee). Still, dicta in recent opinions has suddenly appeared citing Ringer.[6] If this Court is mulling whether Ringer is good law, it must first conduct a proper Gunwall analysis, and it must explain why it is overruling Stroud, Fladebo, Johnson, Vrieling, Parker and similar cases. When a proper Gunwall analysis is conducted, it becomes apparent that

[6] *See* Patton, at 391 n.8 (speculating as to whether Stroud overruled Ringer). These issues were never raised in Patton's petition for review so they were beyond the scope of review. RAP 13.7(b). The issue was raised solely by an amicus brief filed thirty days before oral argument. In State v. Valdez, 167 Wn.2d 761, 224 P.3d 751 (2009), this Court suggested, without applying *any* accepted state constitutional analysis, and without considering the standard for overturning precedent, that Justice Durham's plurality opinion should be overruled.

factors (4) and (6) show that vehicle searches incident to arrest are permitted under the State constitution.

i. Preexisting state law

As to factor (4) of the Gunwall analysis, preexisting state law, Washington Courts have long recognized the validity of searches incident to arrest under the State constitution:

> This court has from the earliest times followed the rule that articles, personal effects, or money, taken from the person of a defendant lawfully arrested, may be used in evidence against him.

Olympia v. Culp, 136 Wash. 374, 377-78, 240 P.360 (1925), *citing* State v. Nordstrom, 7 Wash. 506, 35 P. 382 (1893); State v. Burns, 19 Wash. 52, 52 P. 316 (1898); and State v. Royce, 38 Wash. 111, 80 P. 268 (1905).

At the time the Washington constitution was enacted, there was of course no case law applying this doctrine to motor vehicles – they had been invented only a few years before. When the use of automobiles became widespread, this Court included them within the scope of searches incident to arrest:

> It has always been held that a peace officer, when he makes a lawful arrest, may lawfully, without a search warrant, search the person arrested and take from him any evidence tending to prove the crime with which he is charged. If a search may be made of the person or clothing of the person lawfully arrested, then it would follow that a search may also be

> properly made of his grip or suit case, which he may be carrying. From this it seems to us to follow logically that a similar search, under the same circumstances, may be made of the automobile of which he has possession and control at the time of his arrest. This is true because the person arrested has the immediate physical possession, not only of the grips or suit cases which he is carrying, but also of the automobile which he is driving and of which he has control.

State v. Hughlett, 124 Wash. 366, 370, 214 P. 841 (1923).

This doctrine was repeatedly applied over the ensuing years. State v. Ninch, 131 Wash. 344, 346, 230 P. 129 (1924) (liquor in plain view in car could be seized without a warrant); State v. Deitz, 136 Wash. 228, 239 P. 386 (1925) (affirmed search of truck following arrest for insufficient vehicle lights); State v. Miller, 151 Wash. 114, 275 P. 75 (1929) (affirmed search of suitcase in car searched at police station incident to arrest; State v. Knudsen, 154 Wash. 87, 280 P. 922 (1929) (affirmed search of truck incident to arrest where evidence of crime of arrest was visible); State v. Cyr, 40 Wn.2d 840, 246 P.2d 480 (1952) (arrest of burglar in tavern justified search of his car parked nearby); State v. Olsen, 43 Wn.2d 726, 728, 263 P.2d 824 (1953) (arrest for traffic offense justified search that revealed pistol and burglary tools); State v. Jackovick, 56 Wn.2d 915, 355 P.2d 976 (1960) (arrest of defendant for robbery justified search of his car parked outside the place of arrest); State v. Michaels, 60 Wn.2d at 642-43 (vehicle search was proper when it

sought evidence of the crime for which the person was arrested); State v. Gluck, 83 Wn.2d 424, 518 P.2d 703 (1974) (affirming vehicle search incident to arrest of handcuffed burglary suspects).

Similar analysis was applied to searches of other objects or areas in the possession of arrestees. State v. Thornton, 137 Wash. 495, 243 P. 12 (1926) (suitcases); State v. Evans, 145 Wash. 4, 13, 258 P. 845 (1927) (hotel room); State v. Estes, 151 Wash. 51, 274 P. 1053 (1929) (garage).

The case law approving vehicle searches incident to arrest stood unquestioned for 60 years. In 1983, this Court abruptly departed from its prior analysis of this issue, in State v. Ringer, 100 Wn.2d at 674. The court decided that its prior decisions represented an unwarranted expansion of the search incident to arrest doctrine. It chose to "return to the protections of our [state] constitution and to interpret them consistent with their common law beginnings." Id. at 699. In so doing, the court overruled essentially *all* of its prior decisions on vehicle searches incident to arrest. Id., overruling Hughlett, Deitz, Miller, McCollum, Cyr, and Jackovick. As noted above, no Gunwall analysis was conducted.

This radical departure from prior case law was short-lived. Two and one-half years later, Ringer was overruled in State v. Stroud, supra. This Court held in Stroud that the "totality of the circumstances" test adopted in Ringer made it "virtually impossible for officers to decide

whether or not a warrantless search would be permissible." Consequently, the court adopted the following rule:

> During the arrest process, including the time immediately subsequent to the suspect's being arrested, handcuffed and placed in a patrol car, officers should be allowed to search the passenger compartment of a vehicle for weapons or destructible evidence. However, if the officers encounter a locked container or locked glove compartment, they may not unlock and search either container without obtaining a warrant.

Stroud, 106 Wn.2d at 152. Four justices signed this opinion. Four other justices agreed with this result but would have allowed searches of locked containers as well. Id. at 153 (Durham, J., concurring). One justice concurred in the result without explaining his position. The interplay between these opinions was fully described a mere nine years ago and this Court again rejected any suggestion that Ringer survived Stroud. Vrieling, 144 Wn.2d at 492 n.1. The net effect of Stroud was that eight justices of this Court authorized vehicle searches incident to arrest, including situations where an officer believed evidence of the crime would be found in the vehicle, as long as the search did not include locked containers or trunks. Id.

Over the ensuing years, this Court consistently adhered to the reasoning of Stroud. State v. Fladebo, 113 Wn.2d at 395-97; State v. Johnson, 128 Wn.2d at 448 (expressly rejecting an invitation to abandon

Stroud and return to Ringer); Vrieling, at 493-94; State v. Parker, 139 Wn.2d 486, 987 P.2d 73 (1999) (confirming vehicle searches incident to arrest but limiting the scope to property of arrestee not passengers).

In 2009, the U.S. Supreme Court announced new limitations on vehicle searches incident to arrest, in Arizona v. Gant, supra. As a matter of Federal constitutional law, the court adopted the following rule:

> Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or if it is reasonable to believe the vehicle contains evidence of the offense of arrest.

Id., 129 S. Ct. at 1723. Of course, this holding only sets a minimum standard, it cannot control this Court's interpretation of the Washington constitution. York, 163 Wn.2d at 303.

Shortly afterwards, this Court adopted an analysis similar to Gant under the Washington constitution. State v. Valdez, 167 Wn.2d 761, 224 P.3d 751 (2009); State v. Patton, 167 Wn.2d 651, 219 P.3d 651 (2009).

> Today we hold that the search of a vehicle incident to the arrest of a recent occupant is unlawful absent a reasonable basis to believe that the arrestee poses a safety risk or that the vehicle contains evidence of the crime of arrest that could be concealed or destroyed, and that these concerns exist at the time of the search.

Patton, 167 Wn.2d at 394-95. This Court's statement of the governing rule did not specifically include the "offense of arrest" doctrine that was

applied in Gant. Valdez, 167 Wn.2d at 777; Patton, 167 Wn.2d at 394-95. But, neither did the statement of the rule preclude the "offense of arrest" doctrine. Moreover, neither Patton nor Valdez involved any possible application of that doctrine. Both involved arrests pursuant to pre-existing warrants. In neither case was there any fact indicating that the suspect's vehicle contained evidence of the crime for which he was arrested. Thus, the opinions cannot be read as determining whether a search would be valid if such facts did exist. "General statements in every opinion are to be confined to the facts before the court, and limited in their application to the points actually involved." State ex rel Wittler v. Yelle, 65 Wn.2d 660, 670, 399 P.2d 319 (1965).

In short, preexisting Washington case law provides a clear answer to the question raised in the present case. The "crime of arrest" doctrine is not new law in Washington. In 1923, this Court held it proper to search an arrestee's vehicle for evidence of the crime of arrest. Except for the two and one-half year period between December, 1983 to and June, 1986, this Court has consistently adhered to that doctrine. It was not overruled in Gant, Patton, or Valdez, so it remains the law today. This long-established case law can be overturned only on a clear showing that it is incorrect and harmful. State v. Berlin, 133 Wn.2d 541, 548, 947 P.2d 700 (1997).

ii. Matters of particular state or local concern

Factor (6) of the Gunwall analysis shows that in the vehicle search incident to arrest context, Washington already has a more narrow rule as to both the preconditions and the scope of a search incident to arrest. As to preconditions, there must be a nexus at the time of the search between the arrestee, the crime of arrest, and the vehicle, Wright, at 556, whereas the rule under Gant permits a search incident to arrest simply if there is "reason to believe" that evidence of the crime of arrest will be found in the vehicle. Washington's formula is more concrete. As to scope, searches in Washington are limited to unlocked containers in the passenger compartment, and property of passengers is not subject to seizure. Stroud, supra; Parker, supra. Thus, matters of particular state and local concern have already allowed for an independent State rule, and there is no principled basis on which to devise further restrictions.

iii. Defects in the Ringer analysis

A number of defects are apparent in the Ringer court's analysis. For instance, Ringer suggests that every vehicle search case from 1923 and forward strayed from the common law principles on which Art. I, § 7 was founded. Ringer, 100 Wn.2d at 695. But, that assertion fails to appreciate the fact that automobiles did not exist in society in 1889, so no court or legislature ever needed to address the scope of an automobile search. It is unchallenged that searches incident to arrest were authorized in the early years of statehood. The first case to apply those principles to automobiles logically extended the settled principles of ordinary searches incident to arrest to this new context. Hughlett, 124 Wash. at 370. It certainly is not a stretch to say that if the constitution permitted a search of the person and containers in the arrestee's possession, then it also permitted a search of the vehicle. And, the justices who authored Hughlett about thirty-five years after the ratification of our State constitution were certainly in a better position to determine whether the rule was consistent with norms prevailing in 1889 than would be justices deciding a case nearly 100 years after ratification.

Ringer also said that in the period after Michaels, i.e., between 1962 and 1974,[7] the Washington Supreme Court "disregarded the plethora of cases interpreting Const. Art. I, § 7 and began instead to rely on federal cases interpreting U.S. Const. amend. 4." The use of the word "disregarded" suggests that the court changed its constitutional interpretation by turning away from state constitutional analysis in favor of a more police-friendly set of federal precedents. This is not true. First, there was increasing reliance on federal authority after 1961 simply because the Supreme Court demanded that states conform to federal constitutional standards beginning that year. Stroud, 106 Wn.2d at 156 (*citing* Mapp v. Ohio, 367 U.S. 643, 654-55, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961)). Second, even though more federal cases may have been cited, most of the vehicle search cases decided in the 60's and early 70's cited this Court's previous decisions under the State constitution, and were consistent with rulings under those previous cases. Id. Thus, it was erroneous to suggest that this Court "disregarded" Washington's

[7] The Court cites cases decided between 1964 and 1974.

precedents based on Art. I, § 7. This error contributed to the Ringer majority's mistaken belief that this Court had gone badly astray.[8]

Finally, the Ringer analysis failed to appreciate the unique nature of automobiles. As this Court said thirty-six years ago:

> [c]ommon sense dictates that questions involving the searches of motor vehicles or other things readily moved cannot be treated as identical to questions arising out of searches of fixed structures like houses. For this reason what may be an unreasonable search of a house may be reasonable in the case of a motor car.

Gluck, 83 Wn.2d at 427-28 (*citing* Preston v. United States, 376 U.S. 364, 366-67, 84 S. Ct. 881, 11 L. Ed. 2d 777 (1964); State v. Hoffman, 64 Wn.2d 445, 392 P.2d 237 (1964); State v. Jones, 2 Wn. App. 627, 472 P.2d 402 (1970)). In the plurality opinion in Stroud, it was noted that the mobile nature of motor vehicles raises significant *public* safety concerns (not just *officer* safety concerns) because unsecured weapons or contraband could endanger others. Stroud, at 164-65 (Durham, J. concurring). And, "if the police are not allowed to search for evidence of crime at the time of an arrest, the automobile may be moved or incriminating evidence removed from it by accomplices of those arrested." Id. These concerns were not expressly articulated in the Washington cases

[8] Of course, this Court did extend its previous case law by reliance on New York v. Belton, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981), which authorized searches for any evidence, regardless of whether the officer had reason to believe that such evidence related to the crime of arrest. Belton was overruled by Gant.

decided before Ringer, perhaps because the argument was never squarely presented, or because the point seemed obvious to the litigants and this Court. *See also* State v. Tibbles, 169 Wn.2d 375-78 (Madsen, J. dissenting) (discussing the concerns raised by the mobility of vehicles in the exigent circumstances context). In any event, the concerns are valid, and militate against adopting the highly restrictive rule recommended in Ringer.

The mistakes of Ringer should not be repeated. As discussed above, a proper evaluation of the Washington case law shows an unbroken chain of decisions from the days of burgeoning automobile traffic until 1983 wherein justice after justice of this Court approved vehicle searches incident to arrest under Art. I, § 7. A Gunwall analysis requires a return to Stroud and Parker, as limited by Gant; there is no reason under the Constitution to return to Ringer.

3. THE RULE IN RINGER WAS NOT CONSTITUTIONALLY REQUIRED, AND IT WAS BOTH INEFFECTIVE AND COUNTERPRODUCTIVE.

In addition to being not constitutionally required, the Ringer rule, which would essentially transform all cars into the equivalent of mobile houses under warrant case law, is simply ineffective and counter-

productive as to both the rights of arrestees and law enforcement. The rule comes at too great a cost for too little gain.

Moreover -- although there has not been a chance to develop the record on this issue in the present case -- the suggestion in Ringer that telephonic search warrants are readily available is simply inaccurate. Obtaining telephonic warrants is not as simple as picking up a telephone and talking to a judge for a while. In many situations, judges are unavailable to hear such requests. Required recording equipment may not be available or functioning. Today, judges often require that the "telephonic" warrants be reduced to writing and then faxed or e-mailed to them. If the vehicle can be secured, the judge may delay ruling on the warrant until a more convenient time. The result of these practices is that obtaining a telephonic warrant can be a time-consuming process for one or more officers. And, during this time, the officer is unavailable for other patrol duties. These delays will only multiply if a warrant is required for every stop at 2:00 a.m. on a Friday night in which the officer concludes it is reasonable to believe there is evidence of the crime of arrest in the vehicle. Scores of such arrests occur in any given jurisdiction in any 24-hour period.

Numerous other concerns arise, too. If a passenger offers to drive the car away, can the officer insist on holding the car for a search if the

officer simply has a reason to believe that the car contains evidence relevant to arrest, rather than probable cause? Or, must the officer allow the passenger to drive off, perhaps with pounds of methamphetamine or illegally possessed guns? Consider the case of a DUI arrest in which the officer sees a beer can on the console. Is a warrant required before the officer can check the beer can to see if it is opened? Is it reasonable to delay the release of the vehicle to a sober passenger before making such a search?

Also, some of these difficulties will whip-saw on arrestees. For instance, a Ringer-style rule would likely lead to more frequent impounds for warrant and/or inventory searches? After all, if an officer has reason to believe that the vehicle contains weapons or evidence, but he is unable to obtain a telephonic warrant, he risks public safety and the destruction or theft of evidence by leaving the car unattended at the roadway. More frequent impounds will mean higher costs for arrestees, their families, or for the registered owner of the vehicle. It will also mean living without that vehicle until the search has been conducted.

By itself, the inconvenience of delay may not justify an intrusion on an established constitutional right. But when the Washington Supreme Court has long recognized the reduced right to privacy in a vehicle – particularly in the context of a search incident to arrest – the impact on

suspects and citizens should be considered. A brief search of a vehicle after the driver has been arrested, when it is reasonable to believe that there is evidence of the crime of arrest inside the vehicle, is far less intrusive and harmful than a protracted delay at the side of the road while the warrant is obtained and the search then conducted.

The reality is that, when it is reasonable to believe that there is evidence relevant to the crime of arrest in the vehicle, a request for a search warrant will likely be approved; obtaining a warrant has only delayed the implementation of the search to the detriment of all involved. On the other hand, if an officer conducts a search without a warrant, he or she runs the risk that the evidence will be suppressed if there is not a sufficient nexus between the arrestee, the crime of arrest, and the vehicle. In the end, the broad rule of Ringer adds little constitutional protection, and imposes certain significant costs, to the accused.

D. CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals should be affirmed. In keeping with Art. I, § 7, the rule applied by the Court of Appeals is more restrictive than the Federal rule as to both the precondition for and scope of a vehicle search incident to arrest. Wright's

arguments to return this State to the unworkable and constitutionally unnecessary standard of Ringer should be rejected.

DATED this 17th day of December, 2010.

Respectfully submitted,

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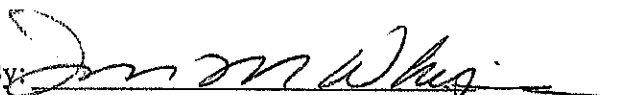
By: 
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Certificate of Service by Mail

Today I sent by electronic mail to the counsel listed below a copy of the SUPPLEMENTAL BRIEF OF RESPONDENT, in State v. Roger Sinclair Wright, Cause No. 84223-0 in the Supreme Court for the State of Washington.

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I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

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Date 12/17/10